IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.12.2007

CORAM

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

CRP.NPD.No.1466 OF 2003 & CMP.No.15971/2003

Kuppayee Ammal .. Petitioner/Petitioner/2nd Defendant

Vs

Athiappa Gounder .. Respondent/Respondent/Plaintiff

Petition filed against the order and decreetal order dated 12.08.2003 passed by the learned Sub-Judge, Kallakurichi Taluk and made in I.A.No.148/2003 in O.S.No.61/2000 filed under section 5 of the Limitation Act to condone the delay of 529 days in filing the petition to set aside the petition under Order IX Rule 13 CPC and set aside the same.

For Petitioner : Mr.V.Bhiman
For Respondent : Ms.P.T.Asha for
M/s.Sarvabhauman Associates

ORDER

The civil revision petitioner is the second defendant in O.S.No.61 of 2000 on the file of the Sub Court, Kallakurichi. The revision petitioner/2nd defendnat filed I.A.No.148 of 2003 before the Lower Court under section 5 of the Limitation Act praying to condone the delay of 529 days in filing Order IX Rule 13 C.P.C. Application.

2.Admittedly, the suit is laid for specific performance by the respondent/plaintiff against the three defendants in the suit and the civil revision petitioner/2nd defendant is one among them. In the suit, an ex-parte decree was passed on 31.07.2001. In I.A.No.148 of 2003 filed by the revision petitioner/2nd defendant before the Lower Court, she has not made any endeavour to explain the cause much less a sufficient cause for condonation of delay in the considered opinion of this Court. It is established fact that the Court of law has to adopt a liberal approach in dealing with the application for condonation of delay. It is not in dispute that one should not adopt a pedantic approach in dealing with the said application. It cannot be said that substantial justice deserves to be preferred in preference to technical consideration when the same are pitted against each other. As a matter of fact, in general, there is no presumption that the delay has occurred deliberately or on account of mala fide or on account of culpable negligence by referring dilatory tactics a party does not stand to benefit. The term 'sufficient cause' must be given a meaningful

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interpretation to serve the ends of justice-that being the life purpose for the existence of the institution of Courts. But, a perusal of the affidavit in I.A.No.148 of 2003 filed by the revision petitioner/2nd defendant indicates that the reason for condonation of delay has not been explained and no endeavour was also made by the revision petitioner/2nd defendant to that effect.

3.The respondent/plaintiff in the counter filed to I.A.No.148 of 2003 has among other things averred that in pursuance of the decree passed on 31.07.2001 after depositing the balance amount into Court as per the directions of the Court, E.P.No.5 of 2002 was filed on 25.01.2002 by the respondent/plaintiff and when a notice was served on the revision petitioner/2nd defendant, she did not enter appearance on 20.02.2002, 22,03,2002 and 17.04.2002 and non-judicial stamps were produced into Court and a regular sale deed was executed by the Trial Court on behalf of the defendants which was also registered and the sale deed was found to be a correct one resulting in culmination of E.P.No.5 of 2002 on 11.02.2003.

4.In the instant case, the respondent/plaintiff filed another Execution Petition in EP.No.13/2003 seeking delivery of the property in pursuance of the sale deed and notice was ordered and the E.P. Was posted to 24.03.2003.

5.It is the case of the respondent/plaintiff that the revision petitioner/2nd defendant has set up her son, the first defendant to come out with this vexatious application and therefore, the said interlocutory application is not maintainable. The learned Sub Judge, Kallakurichi has ultimately dismissed I.A.No.148 of 2003 with costs inter-alia observing that much water flew under the bridge and the revision petitioner/2nd defendant was to explain the delay of 529 days and that each and every day delay should be explained and that was not explained. The reason ascribed by the Trial Court Judge in his order dated 12.08.2003 that 'each and every day's delay should be explained' is not correct in view of the liberal approach to be taken in these matters. But, even then, this Court is of view that atleast a cause much less a sufficient cause ought to have been mentioned in the affidavit filed by the revision petitioner/2nd defendant, but in the instant case on hand, no endeavour was made by the revision petitioner/2nd defendant in her application to say anything about the delay, leave alone explaining the same atleast in bald or in vague terms. Since the revision petitioner has not come out with a positive stand of sufficient cause in I.A.No.148 of 2003 for condonation of delay of 529 days in filing the order IX Rule 13 application, this Court is unable to come to the aid of the Civil Revision Petitioner/2nd defendant and therefore, dismisses the civil revision petition without costs in the interest of justice. The order passed by the learned Sub Judge, Kallakurichi in I.A.No.148 of 2003 dated

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12.08.2003 is confirmed for the reasons assigned by this Court. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ap

To
The Sub Judge,
Kallakurichi.

+ 1 CC To M/s.Sarvabhauman Associates, SR NO.71438

+ 1 CC To Mr.V.Bhiman, Advocate SR NO.71279

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